



27/10/07

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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.491 of 2002

Chandan Ram and others

- Versus -

The State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-

JUDGE

12-10-2007

HON'BLE MR. JUSTICE SUNIL KUMAR SINHA

I agree

Sd/-

**Sunil Kumar Sinha
Judge**

POST FOR JUDGMENT ON 15th OCTOBER, 2007

Sd/-

**L.C. Bhadoo
Judge**



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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.491 of 2002

APPELLANTS:

- 1) Chandan Ram, S/o Shobha Ram,
Aged about 60 years, R/o Umapur,
P.S. Ramanujnagar, Distt. Surguja
(Chhattisgarh)
- 2) Chandragupta, S/o Chandan Ram,
Aged about 21 years, R/o Umapur,
P.S. Ramanujnagar, Distt. Surguja
(Chhattisgarh)
- 3) Thakur Prasad, S/o Ramphal,
Aged about 35 years,
R/o Village Tiuragoodi,
P.S. Ramanujnagar, Distt. Surguja
(Chhattisgarh)

- Versus -

RESPONDENT:

The State of Chhattisgarh,
Through Police Station: Ramanujnagar,
Distt. Surguja (Chhattisgarh)

{Criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973}

Appearance:

Mr. V.K. Pandey, counsel for the appellants.

Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Division Bench: **Hon'ble Mr. L.C. Bhadoo and**
Hon'ble Mr. Sunil Kumar Sinha, JJ.

JUDGMENT

(Delivered on 15th October, 2007)

The following judgment of the Court was delivered by L.C. Bhadoo, J.: -

1. This appeal is directed against the judgment of conviction and order of sentence dated 6-3-2002 passed by the 6th Additional Sessions Judge (Fast Track Court), Surajpur, in Sessions Trial No.414/2000 whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302 read with Section 34 of the I.P.C. for each murder of Narendra & Surendra (both brothers), sentenced each of the accused/appellants to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for six months.



2. Case of the prosecution, in brief, is that accused Chandragupta is son of accused Chandan Ram and accused Thakur Prasad is nephew of accused Chandan Ram. Deceased persons Narendra & Surendra were real brothers. Names of the wives of Surendra & Narendra (both the ladies) are Tarabai. There was a long standing dispute between deceased party and accused party in connection with agricultural field. The accused persons reaped the crop, therefore, deceased Surendra lodged a report (Ex.P-26) on 14-10-2000 against accused persons Chandan Ram & Chandragupta regarding reaping of crop and grazing by the cattle. As a revenge to that report the accused persons master minded the murder of Narendra & Surendra. On 16-10-2000, Surendra invited his younger brother for dinner. At about 8 p.m. on the same day deceased Narendra along with his wife Tarabai, children and his elder brother Surendra was going to the house of Surendra, on the way in front of the house of the accused persons, accused Chandan Ram with axe, accused Chandragupta & Thakur Prasad with Lathis attacked Narendra & Surendra in furtherance of their common intention. On hearing the commotion, Tarabai, wife of Surendra, along with her father Ramdhyan reached on the spot and requested the accused persons not to attack Narendra & Surendra, but that did not fall in the ears of the accused persons and they attacked the deceased persons with the weapons they were holding. As a result of the injuries sustained by them, Narendra succumbed to the injuries on the spot and Surendra was taken to the hospital, however, he was declared brought dead, by the doctor.
3. Tarabai, wife of Surendra, lodged a report (Ex.P-1) in Police Station: Ramanujnagar at 12.30 midnight of 16-10-2000. The Station House Officer registered offence under Sections 302 & 307 read with Section 34 of the I.P.C. Merg intimation Ex.P-2 in respect of the death of Narendra was also given by Tarabai, wife of Surendra. The Investigating Officer left for the place of occurrence and after giving notice Ex.P-6 to the Panchas, prepared inquest Ex.P-7 on the body of Narendra. During police custody, accused Chandan Ram gave memorandum Ex.P-8 regarding the place where he kept the axe and in pursuance of that he got recovered the axe under Ex.P-9. Accused Chandragupta gave memorandum Ex.P-10 regarding the place where he kept the Kallari (Lathi) and in pursuance of that he got recovered the Lathi under Ex. P-11. Accused Thakur Prasad gave memorandum Ex.P-12 regarding the place where he kept the Lathi (weapon of offence) and in pursuance of that, he got recovered the same under Ex.P-13. The Investigating Officer took into possession plain soil & bloodstained soil from the place of occurrence under Exs.P-14 & 15. The paddy which accused Chandan Ram brought after reaping



from the field of Surendra was seized and handed over to the Sarpanch under Ex.P-16. Undergarment of Chandan Ram stained with blood was seized under Ex.P-17. One sweater of Chandragupta was seized under Ex.P-18. One full pant of Thakur Prasad stained with blood was seized under Ex.P-19.

4. Body of Narendra was sent for post-mortem examination to Government Hospital, Ramanujnagar, under Ex.P-21 where Dr. D.K. Vishwakarma (PW-8) conducted post-mortem and noticed three lacerated wounds on occipital, right parietal & left parietal regions, one incised wound on neck and four contusions. He noticed that occipital bone was fractured and membrane below the occipital bone was ruptured. He opined that the death of Narendra was as a result of shock & haemorrhage, injuries were sufficient in the ordinary course of nature to cause death and the death was homicidal in nature. His report is Ex.P-22.
5. Axe & Lathis seized were sent to the doctor under Exs.P-23 & P-24 for his opinion as to whether the injuries found on the bodies of Narendra & Surendra can be caused by the said weapons. Dr. D.K. Vishwakarma (PW-8) gave his opinion Exs.P-23A & P-24A that the injuries found on the bodies of Narendra & Surendra can be caused by the said weapons.
6. Merg intimation Ex.P-25 in respect of the death of Surendra was given. The report lodged by deceased Surendra on 14-10-2000 is Ex.P-26. Site plan Ex. P-27 was prepared by the Investigating Officer.
7. Body of Surendra was sent to Government Hospital, Ambikapur for post-mortem examination under Ex.P-34 where Dr. B.M.L. Shreshth (PW-10) conducted post-mortem on 17-10-2000 and noticed that there was an incised wound on right side & right parietal bone, lacerated wound on right side of head, swelling on right side of head, one incised wound deep up to bone on right cheek, bone near the ear was found cut, incised wound on right side of neck and redness on head. He opined that the injuries were ante mortem in nature and caused by sharp, hard cutting, hard & blunt weapons. Clotted blood was present in the brain. Cause of death was cerebral haemorrhage & shock. Death was homicidal in nature. His report is Ex.P-34A.
8. Seized articles were sent for chemical examination to Forensic Science Laboratory, Sagar, from where report Ex.P-33 was received.
9. After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Surajpur, who in turn committed the case



to the Sessions Judge, Surguja, from where learned Additional Sessions Judge received the case on transfer for trial.

10. The prosecution in order to establish charges against the accused persons examined 11 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them and stated that they are innocent, they have been implicated in a false case. They examined Jagatpal Singh (DW-1) in their defence.
11. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced each of the accused persons as aforesaid.
12. We have heard Mr. V.K. Pandey, learned counsel for the accused/appellants and Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/respondent.
13. Mr. V.K. Pandey has not disputed the homicidal death of Narendra & Surendra. Moreover, Dr. B.M.L. Shreshth (PW-10), who conducted post-mortem (Ex.P-34A) on the body of Surendra and Dr. D.K. Vishwakarma (PW-8), who conducted post-mortem (Ex.P-22) on body of Narendra have stated that the injuries were ante mortem in nature, sufficient in the ordinary course of nature to cause death and deaths of Surendra & Narendra were homicidal in nature. Above medical evidence is corroborated by the evidence of Tarabai (PW-1), wife of Surendra & Tarabai (PW-2), wife of Narendra. They have categorically stated in their evidence that the accused persons attacked with axe & Lathis. Therefore, from the above medical & ocular evidence, it is established that the death of Narendra & Surendra was homicidal in nature.
14. As far as complicity of the accused persons in the crime in question is concerned, the prosecution has produced Tarabai (PW-1), wife of Surendra & Tarabai (PW-2), wife of Narendra, as eyewitnesses. Other eyewitnesses namely, Aagar Sai @ Madhu (PW-3), Maniram (PW-4) & Hukum Sai (PW-6) have turned hostile and they have not supported the prosecution case.
15. Mr. V.K. Pandey, learned counsel for the appellants, argued that as far as the evidence of Tarabai (PW-1), wife of Surendra, is concerned, perusal of her police case diary statement recorded under Section 161 of the Cr.P.C., the first information report and her evidence before the Court reveal that she reached on the spot when Surendra & Narendra were already attacked and they were lying in injured condition. She was at her residence waiting for her husband & brother-in-law that they will come for dinner. When she heard the commotion, she along with her father Ramdhyan left for the place of occurrence and by the time they reached, everything was over. In fact, this witness did not witness

the crime. Even Tarabai (PW-2), wife of Narendra, who was accompanying Narendra & Surendra for going to the house of Surendra, has stated in her evidence that after hearing the commotion her sister-in-law i.e. Tarabai (PW-1), wife of Surendra, came on the spot along with her father.

16. The argument of Mr. V.K. Pandey is based on record. Perusal of the police case diary statement (Ex.D-1) of Tarabai (PW-1), wife of Surendra, reveals that on hearing the commotion, she along with her father Ramdhyani rushed towards the scene of occurrence, Surendra and her brother-in-law were already lying in injured condition, Narendra was lying on the bank of southern agricultural field, whereas her husband Surendra was lying in front of the house of Chandan Ram, there were injuries on head, back portion & cheek of her husband, blood was oozing out of those injuries, whereas there were injuries on head, neck & iliac rest of Narendra, blood was oozing out of the injuries. Perusal of the first information report Ex.P-1 also reveals that she left the house along with her father, after hearing the commotion. But it is admitted fact that this witness saw her husband lying in injured condition in front of the house of accused Chandan Ram and Narendra lying on southern bank of agricultural field.

17. Tarabai (PW-2), wife of Narendra, has categorically stated in her evidence that on the fateful day i.e. on 16-10-2000 at about 7 p.m. Surendra came to her residence for taking them to his residence for dinner, after getting ready, they started along with Surendra for his residence, Surendra was ahead, her husband Narendra was behind him and after her husband Narendra, she along with her three children proceeded for the house of Surendra. When they reached in front of the house of Chandan, Chandan started abusing them on which Surendra replied "brother why are you abusing". Accused Chandan attacked Surendra with axe, Thakur Prasad & Chandragupta with Lathis. Narendra tried to intervene, but Surendra fell down. Therefore, Narendra started running, but all the three accused persons attacked him also with axe & Lathis. Chandan attacked with axe, whereas other accused persons attacked with Lathis, as a result of which Surendra sustained injuries on neck, cheek, head, back & front portions. Her husband Narendra sustained injuries on back portion, shoulder and front portion. Neck of her husband was also cut. He died instantaneously. She has further stated in her evidence that thereafter, her husband Narendra & brother-in-law Surendra were taken to hospital in a jeep. She has further stated that since it was dark night, she was carrying torch and in the light of torch, she saw the accused persons.



18. Mr. V.K. Pandey argued that in the first instance no independent witness has corroborated the evidence of Tarabai (PW-2), wife of Narendra, she being close relative of the deceased persons, her testimony cannot be believed, without corroboration. He further argued that these witnesses have admitted in their cross-examination that on the fateful day it was dark night, therefore, they were not able to identify the assailants. He also argued that in the case diary statement of Tarabai (PW-2), wife of Narendra, it was not mentioned that she was carrying torch. He further submitted that as far as accused Thakur Prasad is concerned, he is resident of another village, he is nephew of accused Chandan Ram and he had no grudge against the deceased persons, therefore, he has been falsely implicated in the crime.

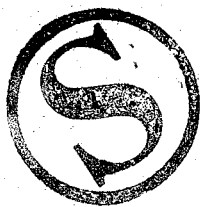
19. On the other hand, Mr. Akhil Mishra, learned Panel Lawyer supported the judgment of the trial Court.

20. As far as the first argument of learned counsel for the appellants is concerned, it is admitted position that Tarabai (PW-2) is wife of Narendra. But now law is well settled on the point that the testimony of a witness cannot be rejected merely on the ground that the witness is relative of the victim, but the same has to be scrutinized with care and circumspection. The Apex Court in the matter of **Rizan and another vs. State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur**¹ held that the relationship is not a factor to affect credibility of a witness. It is more often than not a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such a case, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible.

21. In the matter of **Namdeo vs. State of Maharashtra**², the Apex Court held that a witness who is a relative of deceased or victim of the crime cannot be characterized as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive. The Apex Court also observed that a close relative cannot be characterized as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable,

¹ AIR 2003 SC 976

² 2007 AIR SCW 1835



inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.

22. Based on the above principle, if we scrutinize the evidence of Tarabai (PW-2), wife of Narendra, she has stated in her evidence that she along with her husband Narendra, brother-in-law Surendra & children were going to the residence of Surendra for taking dinner and when they reached in front of the house of Chandan Ram, the accused persons attacked. In the first instance, as per the record, it is admitted position that injured body of Surendra was lying in front of the house of Chandan Ram and dead body of Narendra was also lying in the nearby area, injuries were fresh and blood was oozing out of the injuries. Therefore, this fact strengthens the evidence of this witness that when they were going from the house of Narendra to the house of Surendra and when they reached in front of the house of Chandan Ram, the attack was made. Moreover, the manner in which the attack was made, the weapons with which the accused persons attacked has been clearly and distinctly narrated by this witness, those weapons were recovered from the accused persons in pursuance of the memorandums given by them and the doctor has opined that the injuries found on the body of Surendra & Narendra can be caused by the weapons produced before him. Tarabai (PW-2) has categorically specified the parts of the body where the accused persons attacked. Therefore, this circumstantial evidence corroborates the testimony of this witness. It is also admitted fact that there was old animosity between deceased party and accused party in respect of agricultural field, even when two days prior to the incident cattle of the accused persons grazed the crop of victim party, deceased Surendra lodged a report (Ex.P-26) in the Police Station on 14-10-2000 regarding the damage caused to their crop by the cattle of the accused persons. That is why the accused persons were having motive and grudge against the deceased persons to teach them a lesson.

23. Now, coming to the point of identity, in the first instance, Tarabai (PW-2), wife of Narendra, has categorically stated in her evidence that she witnessed the crime from a very close range. She is a natural witness and her presence at the scene of occurrence is also natural, because at that time, she was accompanying her husband Narendra, brother-in-law Surendra and children to the house of Surendra for taking dinner. The accused party was well known to her, because they were residents of the same village and dispute was going-on

between them. Crime was committed in front of the house of main accused Chandan Ram, he has not offered any explanation that how this incident happened in front of his house, who were the persons involved in the said incident and how deceased persons Surendra & Narendra sustained fatal injuries.

24. Therefore, it cannot be said that Tarabai (PW-2), wife of Narendra, was not able to identify the accused persons. Even though she has stated in her evidence that she was carrying torch and in the light of torch she could identify the accused persons, but even for the sake of argument if this version is not accepted, she was able to identify the accused persons, because they were known to her in advance and the crime was committed at a very close range by the accused persons, as such, it cannot be said that this witness was not able to identify the accused persons.

25. As far as the argument that accused Thakur Prasad is nephew of Chandan Ram, he had no animosity against the deceased persons and he has been falsely implicated in the crime is concerned, we do not find any substance in this argument also. It is admitted position that Thakur Prasad is nephew of Chandan Ram. Tarabai (PW-2), wife of Narendra has categorically stated in her evidence that Thakur Prasad was also a party to the attack. Moreover, Lathi has been seized at the instance of this accused. There is no reason for this witness (PW-2) to implicate Thakur Prasad in a false case without any rhyme or reason. She has categorically stated that accused Thakur Prasad was also a party to the attack. Therefore, the evidence of Tarabai (PW-2), wife of Narendra, inspires full confidence of the Court and does not suffer from any infirmity and explicit reliance can be placed on her evidence. In the circumstances, involvement of the accused persons in the crime in question to that extent is established and we do not find any illegality or infirmity in the judgment of the trial Court.

26. Mr. V.K. Pandey further argued that in this case allegations against Thakur Prasad & Chandragupta are that they attacked the deceased persons with Lathis, therefore, it cannot be said that they were sharing common intention with Chandan Ram who attacked the deceased persons with axe with intention to cause their death. Hence, as far as Thakur Prasad & Chandragupta are concerned, offence against them do not travel beyond Section 304 Part-II of the I.P.C.

27. But we are afraid that the argument advanced by learned counsel for the appellants is contrary to the record, because perusal of the evidence of Dr.



D.K. Vishwakarma (PW-8), who conducted post-mortem on the body of Narendra, reveals that there were three lacerated wounds on occipital, right parietal & left parietal regions, occipital bone was fractured, membrane below the occipital bone was ruptured, these injuries were caused by blunt & hard object. Therefore, the force with which the Lathi blows were given on the head of Narendra whereby the occipital bone was fractured, establishes the intention of the accused persons with which they attacked Narendra. Similarly, Dr. B.M.L. Shreshth (PW-10) conducted post-mortem on the body of Surendra and stated that apart from incised wounds there were lacerated wounds on right side of parietal region of head, swelling on right temporal region and below that the bone was fractured, even the bone of cheek was also fractured. He has further stated that injury Nos.1, 4 & 5 were caused by sharp & hard cutting object, whereas injury Nos.2, 3, 6 & 7 were caused by hard & blunt object.

28. Therefore, from the evidence of these two doctors and the manner in which the accused persons attacked the deceased persons, it is clearly established that intention of all the three accused persons was writ large to teach a lesson to the deceased persons, as such, both the deceased persons (brothers) were done to death.

29. In the result, we do not find any substance in this appeal, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Soma